

67. We are not imposing a 100 percent simulcasting requirement from the outset, as some parties urge.²⁴⁴ NCTA is concerned about our ability to reclaim the reversion channel under the simulcasting regime we establish.²⁴⁵ As NAB states, we have ensured that ATV is a replacement service.²⁴⁶ We reiterate that we will reclaim the reversion channel at the conversion date, i.e., 15 years from the time an ATV Allotment Table/standard is effective. Indeed, one of our purposes in setting a simulcast timetable now is to prepare broadcasters for such an eventuality. We do not believe that, as a policy matter, permitting broadcasters initial complete flexibility for one year after the application/construction period closes, at which point we will begin to phase in a simulcast requirement, will result in the creation of a permanent separate programming service on the ATV channel.²⁴⁷ Indeed, assuming that the technical difficulties discussed just above can be overcome, there is evidence that programming on the ATV channel may initially consist largely of material upconverted from the NTSC format.²⁴⁸ We also do not believe that Ashbacker and its progeny²⁴⁹ require a more rigorous simulcasting regime, as NCTA contends.²⁵⁰ As NAB and MSTV argue, we have the authority to

opposed to simulcast, programs. Fox Comments at 9.

In addition, Sony suggests that NTSC investment will continue to be used by alternative multichannel media offering new innovations in NTSC, such as multichannel NTSC. Sony Comments at 46-49.

²⁴⁴ See, e.g., NCTA Comments at 9-16.

²⁴⁵ NCTA Comments at 4.

²⁴⁶ NAB Reply at 6-7.

²⁴⁷ NCTA Comments at 4. As discussed infra note 280, we have few restrictions on the program content which may properly be aired on the television service pursuant to Part 73, Subparts E and H of our Rules, 47 C.F.R. Part 73, Subparts E and H. We thus do not believe that permitting non-simulcast programming on the ATV channel necessarily makes it something other than television service transmitted in the ATV format.

²⁴⁸ See, e.g., NAB Reply at 3.

²⁴⁹ Ashbacker Radio Corp. v. FCC, supra, 326 U.S. 327; United States v. Storer Broadcasting Co., supra, 351 U.S. 192 (hearing requirement of 47 U.S.C. § 309 does not limit the Commission's power to promulgate rules setting license eligibility criteria).

²⁵⁰ NCTA Comments at 4-5, 14-16; NCTA Reply at 3-4, 7-10. Contrary to NCTA's claim, we do not believe that our rules prohibiting FM translators from local origination are apposite. Amendment of Part 74 of the FM Commission's Rules Concerning Translator Stations, 5 FCC Rcd 7212 (1990). FM translators are licensed as a secondary service intended to supplement the service of primary stations. The ATV conversion channel is an interim grant

establish threshold qualifications before an applicant is entitled to comparative consideration.²⁵¹ Allowing some initial flexibility regarding programming fosters expeditious development of ATV and thus strengthens our reasons for restricting eligibility to existing broadcasters as an initial matter.²⁵² We agree with MSTV that it may be that only by having such initial flexibility will a broadcaster be able to develop a competitive ATV service.²⁵³ We also agree with MSTV that permitting initial flexibility will not disenfranchise NTSC viewers.²⁵⁴ As a practical matter, because initial ATV receiver penetration is expected to be low, it is unlikely that significant numbers of viewers will have come to rely on any separately programmed material on the ATV channel by the time we begin to impose a simulcasting requirement.²⁵⁵ Should ATV penetration be higher than initially projected, we can make the appropriate adjustment in our 1999 review.²⁵⁶ We thus disagree with NCTA that the interim, transitional nature of the conversion channel requires 100 percent simulcasting from the outset.²⁵⁷

68. On the other hand, we also decline NAB's request that we permit broadcasters ultimately some flexibility to program without limit in response to viewer demand, as opposed to implementing a 100 percent simulcasting

of spectrum intended, at the conversion date, to substitute for the NTSC channel as a primary service.

²⁵¹ NAB Reply at 6-7; MSTV Reply at 24-25; United States v. Storer Broadcasting Co., 351 U.S. 192.

²⁵² See also NAB Reply at 6-7.

²⁵³ MSTV Reply at 24-25.

²⁵⁴ MSTV Reply at 24-25.

²⁵⁵ See also discussion of ATV receiver penetration supra Section VI.B. See also MSTV Reply at 24-25.

²⁵⁶ ATV receiver penetration prior to 1999, before existing broadcasters are required to be on the air, has been projected at from less than one percent to about 13 per cent. Compare Darby Report at 29 (less than one per cent) with PSWP5 1992 Study, Figure 2 (about 13 percent using High Perceived Value-Low Price curve). Thus, we do not expect that any adjustment to the simulcast deadline will be necessary prior to this point, at which time we can also take account of other relevant factors such as the development of downconverters for home use on NTSC receivers and the development of necessary professional equipment. Moreover, we can better evaluate this preliminary decision at the review of the application/construction times we are scheduling at the point an ATV standard/Allotment Table is effective.

²⁵⁷ NCTA Comments at 7-13. Additional arguments which NCTA raises regarding carriage of ATV signals are beyond the scope of this proceeding. NCTA Comments at 7.

requirement.²⁵⁸ We understand broadcasters' need to develop additional revenues to help defray the investment necessary to implement ATV.²⁵⁹ Our broad definition of simulcasting permits such development. However, receipt of additional revenues from this second channel, like use of the channel itself, is transitional only, terminating at the point of conversion. NAB correctly states that simulcasting serves the public interest at the "tail end of the conversion process" by protecting the relatively smaller NTSC audiences that we expect will exist vis-a-vis ATV viewers at that time.²⁶⁰ We intend to ensure that the path to the final conversion to ATV is as direct and unaffected by collateral factors as possible. To do so, we must adopt measures that ensure that, as the ATV transition progresses, broadcasters do not disproportionately rely on revenues from their second channel, that significant numbers of viewers do not come to expect a second channel of completely differentiated programming, and that the increasingly smaller number of NTSC-only viewers are not abruptly disenfranchised. We therefore decline to reconsider our determination that a 100 percent simulcasting requirement should ultimately be applied.

69. We also do not agree with those who would defer any decision on a simulcasting requirement.²⁶¹ Broadcasters, manufacturers, programmers and consumers need a clear planning horizon to make the transition to full ATV broadcasting smoothly and with minimal financial disruption. The preliminary timetable we establish, together with our provision for its review, should alleviate parties' concerns that our schedule will hinder broadcaster flexibility and effective development of ATV.²⁶² This schedule permits broadcasters to adjust gradually to the new demands of this technology and develop ATV markets accordingly, without threatening NTSC service.²⁶³ We thus adequately accommodate NAB's concern that we afford broadcasters' sufficient flexibility to finance and attract viewers to the second ATV channel, while at the same time fulfilling our objectives of protecting NTSC viewers, assuring spectrum efficiency and accomplishing a smooth technological

²⁵⁸ NAB Reconsideration at 3-4 n. 3; NAB Reply at 1-2. Cf. Golden Orange Comments at 5-6 (concluding that general simulcast requirement is neither practicable nor advisable).

²⁵⁹ NAB Reconsideration at 3-4 n. 3.

²⁶⁰ NAB Reconsideration at 3-4 n. 3. But see NAB Reply at 4-5.

²⁶¹ See, e.g., Joint Broadcaster Comments at 21-22; Fox Comments at 3; MSTV Reply at 11, 16; EIA/ATV Committee Comments at 10 (arguing for deferral until our review of conversion date); NAB Reply at 1-2 (defer any decision, if at all, until the end of the transition period). Cf. ATSC Further Comments at 2 (supporting Joint Broadcasters); MPAA Comments at 7 (arguing in alternative).

²⁶² NAB Reply at 2, 4; Joint Broadcaster Comments at 21-22; Fox Comments at 11-12, 17; EIA/ATV Committee Comments at 10; MSTV Reply at 23.

²⁶³ NAB Reply at 2; Fox Comments at 9, 16.

transition.²⁶⁴ We also believe that our regulatory approach is sufficiently flexible that it is unnecessary to afford special relief to classes of stations that may be at a competitive disadvantage, as Golden Orange suggests.²⁶⁵

70. It is true, as some suggest,²⁶⁶ that our two-stage implementation would offer less flexibility during the introductory period of ATV than if we only imposed a simulcasting requirement at the nine-year mark. We believe that phase in of the requirement, however, will begin to accustom both broadcasters and viewers to simulcasting, and thus make the ultimate transition to full simulcasting easier. We therefore agree with those who advocate such a phased-in approach.²⁶⁷

71. Our periodic reviews will permit us to calibrate our regulatory requirements to marketplace conditions as they develop.²⁶⁸ In those reviews, we can take account of the development of consumer downconverters and other

²⁶⁴ NAB Reply at 1-2.

²⁶⁵ Golden Orange Comments at 5-6.

²⁶⁶ NTIA Comments at 13 n.22. See Second Report/Further Notice, 7 FCC Rcd at 3356-57.

²⁶⁷ Grass Valley Comments at 2. Given the point at which we are imposing 100 percent simulcasting, nine years after an ATV standard/Allotment Table is effective, we do not believe a more gradual phase in than we alternatively proposed is necessary. See generally MPAA Comments at 7. We note in this regard that the dates for 50 percent and 100 percent simulcasting remain as we proposed in the Second Report/Further Notice, seven years and nine years, respectively, from the onset of ATV implementation. 7 FCC Rcd at 3357.

We also believe that the simulcast regime we adopt is sensitive to the First Amendment concerns which parties such as Fox raise. Fox Comments at 10. We are refraining from imposing any simulcast requirement for seven years after ATV implementation begins, and then will only impose a 50 percent simulcasting requirement after a prior review confirms that this remains appropriate. We will then impose a full simulcasting requirement nine years after ATV implementation starts, again only after we have had the benefit of another review. We believe that these presumptive deadlines and this schedule for review provide adequate opportunity for any necessary adjustments. We also are affording broadcasters considerable latitude regarding content and scheduling of simulcast programs through the flexible definition of simulcasting we adopt. See infra this Section. We believe that we may, consistent with the Constitution, condition access to the conversion channel on compliance with the simulcast regime we adopt.

²⁶⁸ NAB Reply at 2.

similar alternatives to purchase of new receivers,²⁶⁹ ATV set penetration and cost, ATV programming, and audience share and ratings. We believe that reviews at the close of the application/construction period, in 1999, and again in 2002, prior to imposition of one hundred percent simulcasting, will provide us with significant additional evidence on these questions, while giving broadcasters renewed notice of what their simulcasting obligations will be.²⁷⁰ We will modify our simulcast timetable only upon a substantial showing that such change furthers the public interest.

B. Definition of Simulcasting: Preliminary Decision,

72. For the reasons given below, we define simulcasting as the broadcast on the NTSC channel, within 24 hours, of the same basic material as that broadcast on the ATV channel, with the exclusion of commercials and promotions.²⁷¹ We will not permit the use of the ATV conversion channel of an ATV-NTSC pair for subscription services on a stand-alone basis.²⁷²

73. All parties commenting on the issue agree that we should define simulcasting as the broadcast of the same basic or underlying material.²⁷³ This would permit variances in production techniques, such as different aspect ratios, camera angles, and number of cameras, and the insertion or deletion of specific material, which may be necessary because of technical differences between ATV and NTSC.²⁷⁴ This approach would also help showcase the differences in the two technologies and thus help increase consumer attraction and ultimately ATV receiver penetration.²⁷⁵ We also agree with the consensus of commenting parties that "program," for purposes of the simulcasting

²⁶⁹ See, e.g., Sony Comments at 40-41 (speculating on a scenario where cable systems downconvert any ATV channel without the need for the consumer to make any hardware purchases).

²⁷⁰ Cf. NTIA Comments at 13 (arguing for review prior to imposing one-step simulcasting requirement at the nine-year mark); Fox Comments at 3, 8 (arguing for deferral of simulcast issue until 1998, the then-date for close of application/construction period in order to better assess such factors); MSTV Reply at ii, 16, 23 (alternatively arguing for periodic review in 1998).

²⁷¹ We sought comment on how to define simulcasting in the Second Report/Further Notice, 7 FCC Rcd at 3357.

²⁷² This restriction applies to the use of the ATV conversion channel throughout the 15-year transition period, not merely during the period in which simulcasting is required.

²⁷³ See, e.g., NCTA Comments at 16; Joint Broadcasters at 22; Grass Valley Comments at 2.

²⁷⁴ Fox Comments at 14; MPAA Comments at 7.

²⁷⁵ NCTA Comments at 16.

definition, should exclude commercials and promotions.²⁷⁶ Such exclusions will allow broadcasters to experiment with ATV production and to maximize revenues to finance the transition to ATV. We also clarify that simulcasting means the broadcast of the same basic material as shown on the ATV channel on the NTSC channel, but not also the converse.²⁷⁷ One main concern in imposing simulcasting is the protection of consumer investment in existing equipment. This goal is satisfied by insuring that NTSC viewers are shown the same programs as ATV viewers. Requiring broadcast of NTSC programming on the ATV channel would also not further any of the other policies underlying our simulcast approach.

74. We further agree with those commenting parties who support defining "simulcast" of a program as broadcast of that program within a 24-hour period.²⁷⁸ Permitting multiple plays of ATV programs that can be downconverted and simulcast on NTSC should ease any technical difficulties that may remain at the time of simulcasting in downconverting particular types of ATV programs, as well as any difficulties broadcasters may face in locating, arranging for, and establishing relations with sources of new ATV programming.²⁷⁹ We agree with Fox that allowing pre-released and multiple plays of programs on the ATV channel within a 24-hour period could increase the attractiveness of the ATV channel to viewers, thus helping to spur ATV penetration.²⁸⁰ The 24-hour rule will not disenfranchise NTSC-only viewers,

²⁷⁶ Joint Broadcasters Comments at 22; Fox Comments at 14; NCTA Comments at 17.

²⁷⁷ Thus, for example, under 100 percent simulcasting, all programs shown on the ATV channel would also be shown on the NTSC channel. If the broadcast day of the NTSC channel is longer than that of the ATV channel, however, not all programs aired on the NTSC channel would also be shown on the ATV channel. We seek comment on whether, if we permit ancillary uses, we should require minimum operating hours on the ATV channel infra Section VII.C.

²⁷⁸ See, e.g., Joint Broadcasters Comments at 22; Fox Comments at 15; Golden Orange Comments at 6; NAB Reply at 7.

²⁷⁹ See supra Section VII.A. Although we do not foresee a problem in obtaining ATV programming, it is possible that broadcasters may have to explore different programming sources when they broadcast in ATV as opposed to conventional NTSC.

²⁸⁰ Fox Comments at 15. NCTA argues that such a 24-hour rule would "cross the line into the development [of the ATV channel] as a separate programming service". NCTA Comments at 17. We observe in this connection that ATV programming, including that offered within a 24-hour period, is still "television service" within the meaning of our existing rules; it merely uses different transmission technology. 47 C.F.R. Part 73, Subparts E, H. Traditionally, our interpretation of "television service" has included a broad class of program types. See, e.g., Family Media, Inc., 2 FCC Rcd 2540 (1987) (permitting home shopping television programming).

as NCTA suggests.²⁸¹ Viewers will still see essentially the same programs, only at different times, a point that NCTA concedes. A 24-hour rule will allow broadcasters to increase ATV penetration through new means of attracting consumers to ATV, to experiment creatively with ATV program scheduling, and to respond more freely to local market demands. Such a definition will thus further the implementation of ATV in an expeditious and efficient manner, contrary to NCTA's position.²⁸² Indeed, this added flexibility may provide the spur to ATV implementation and penetration that will permit swift recapture of the reversion channel.²⁸³ Moreover, if it appears that ATV develops in a fashion making these rules inappropriate, we will be able to modify them at our periodic reviews prior to phase in of the simulcasting requirement.²⁸⁴

75. Contrary to Fox' proposal,²⁸⁵ we will not allow broadcasters with ATV/NTSC channel pairs to use their ATV channel for a stand-alone subscription ATV service, separate from a free NTSC service. To do so would encourage use of the ATV channel as a separate service, based on subscriber and not advertiser revenues. These effects and incentives are contrary to the reason we are awarding broadcasters a second channel--to permit the viewing public to make a nondisruptive transition to ATV and allow the reclamation of the second channel after that transition is complete.²⁸⁶

C. "ATV Programming": Reconsideration/Further Notice

76. The Second Report/Further Notice stated that we would expect non-simulcast programming on the ATV channel to take full advantage of ATV technical capabilities.²⁸⁷ Considering that this Commission is devoting a large amount of prime spectrum to an ATV service, we continue to expect broadcasters to take full advantage of the capabilities of ATV. As discussed above, we are seeking comment on whether to permit other types of advanced

²⁸¹ NCTA Comments at 17.

²⁸² NCTA Comments at 17-18.

²⁸³ Former Section 73.242, 47 C.F.R. § 73.242 (deleted 1986), limited the duplication of programming on AM and FM stations co-owned in the same local area and defined duplication as the "simultaneous broadcasting" or broadcasting "within 24 hours" of an "identical program." This rule was intended to foster development of FM radio and to reduce spectrum inefficiency. Amendment of Section 73.242 of the Commission's Rules and Regulations in Regard to AM-FM Program Duplication, 103 FCC 2d 922, 923 (1986).

²⁸⁴ See supra Section VII.A.

²⁸⁵ See Fox Comments at 15.

²⁸⁶ Second Report/Further Notice, 7 FCC Rcd at 3342-43.

²⁸⁷ Second Report/Further Notice, 7 FCC Rcd at 3357.

technology uses on the ATV channel. To attempt to define what is or is not ATV programming at this time might lead us to inadvertently prohibit some sources and formats of programs on ATV channels that would be highly desirable to viewers. Accordingly, we will defer further defining "ATV programming" until we have the benefit of a record on other types of advanced technology that might be appropriately permitted on the ATV channel. We also defer a decision on EIA/ATV Committee's recommendation²⁸⁸ for a requirement of a minimum number of hours that broadcasters must air of "true" HDTV quality programming, while reiterating our intention that the ATV channel not be squandered.

77. Fox and MSTV support permitting broadcasters to raise additional revenue on their ATV channels by using these channels for ancillary purposes, analogous to ancillary uses of NTSC such as the use of the vertical blanking interval (VBI), subsidiary communication authorizations (SCA), and second audio programming (SAP).²⁸⁹ Under the proposal, excess data capacity would be used in two ways. It might be used during times when the ATV channel was otherwise non-operational, such as overnight. Such excess data capacity might also be used on a non-interfering basis during ATV transmission. Such ancillary uses, if technically possible, might be critical to successful implementation of ATV in its early stages, when receiver penetration is low. We have previously permitted ancillary uses of this nature to help spur development of a new technology.²⁹⁰ On the other hand, we would not want such ancillary uses to predominate over the primary use of the channel. Accordingly, we seek comment on the technical feasibility and policy implications of permitting such ancillary uses. Should we permit such ancillary uses during non-operation time, we also seek comment on whether we should require some minimum operating schedule for ATV, as we currently impose on NTSC operators.²⁹¹ We observe in this connection that such a requirement might help ensure that the public received maximum value from conversion spectrum granted to broadcasters.

VIII. PATENT LICENSING AND RELATED ISSUES: REPORT AND ORDER

78. We have previously stated that in order for ATV implementation to be fully realized, the patents on any winning ATV system would have to be

²⁸⁸ EIA/ATV Committee Comments at 10-11.

²⁸⁹ Fox Comments at 13-14; MSTV Reply at 27. Broadcasters are permitted to provide such ancillary services on the current NTSC frequency so long as there is no observable degradation to any portion of the visual or aural signals. 47 C.F.R. §§ 73.682(a) (23) (ii), 73.646.

²⁹⁰ For example, ancillary use of a frequency was allowed in order to initiate the development of Direct Broadcast Satellite Service, or DBS. United States Satellite Broadcasting Co., Inc., 1 FCC Rcd 977 (1986), recon. denied, 2 FCC Rcd 3642 (1987).

²⁹¹ 47 C.F.R. § 73.1740(a) (2).

licensed to other manufacturing companies on reasonable terms.²⁹² The ATV testing procedures already require proponents to submit, prior to testing, a statement that any relevant patents they own would be made available either free of charge or on reasonable, nondiscriminatory terms.²⁹³ Contrary to the views of some,²⁹⁴ we continue to believe that this requirement adequately safeguards the consumer and competitive interests in reasonable availability of relevant patents, and thus, that greater regulatory involvement is not necessary at this time.²⁹⁵ We nevertheless appreciate the importance of this issue, and will, as EIA/ATV Committee suggests, remain responsive to any complications or abuses that may arise.²⁹⁶ We also reiterate that we will condition the selection of an ATV system on the proponent's commitment to reasonable and nondiscriminatory licensing of relevant patents.²⁹⁷

79. The Second Report/Further Notice recognized the importance of prompt disclosure of a winning system's technical specifications to the mass production of ATV professional and consumer equipment in a timely fashion.²⁹⁸ EIA/ATV Committee asserts that incomplete or unavailable documentation would result in major delays in ATV implementation. According to ATSC, immediately after the Advisory Committee recommends a system, ATSC will document the ATV

²⁹² Notice, 6 FCC Rcd at 7034; Second Report/Further Notice, 7 FCC Rcd at 3358.

²⁹³ Proponents are required to follow the American National Standards Institute (ANSI) patent policies in certifying as to the availability of relevant patents they hold. ANSI requires assurance that:

- (1) A license will be made available without compensation to applicants desiring to utilize the license for the purpose of implementing the standard, or
- (2) A license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

ATV Test Procedures Test Management Plan, Appendix A, § D.2 (Rev. Sept. 25, 1990).

²⁹⁴ Grass Valley Comments at 5-6.

²⁹⁵ Second Report/Further Notice, 7 FCC Rcd at 3358. See also AT&T Comments at 6.

²⁹⁶ EIA/ATV Committee Comments at iii, 11-12.

²⁹⁷ Second Report/Further Notice, 7 FCC Rcd at 3358.

²⁹⁸ Second Report/Further Notice, 7 FCC Rcd at 3358. See also EIA/ATV Committee Comments at iii, 12.

technical standard as it will be implemented for broadcast transmission.²⁹⁹ Other industry groups will document the specifications needed for other media.³⁰⁰ We appreciate the diligence with which ATSC and the other groups participating in standardization are pursuing these matters, as well as the attention which the Advisory Committee has given this question.³⁰¹ We encourage ATSC and its member groups, as Joint Broadcasters and EIA/ATV Committee suggest,³⁰² to begin the actual documentation process as soon as they have sufficient data.

IX. COMPATIBILITY

A. Other Transmission Forms and Media Applications: Report and Order

80. The Second Report/Further Notice recognized the importance of ATV compatibility with other transmission forms and media applications, both in terms of the successful marketplace acceptance of ATV and for purposes of selecting an ATV transmission standard.³⁰³ Parties commenting on the issue generally favor such compatibility,³⁰⁴ some noting in particular the importance of compatibility with other video delivery media, such as cable and VCRs.³⁰⁵ We also agree with EIA/ATV Committee and AT&T that compatibility issues are part of our overall goals in this proceeding and must be considered with other objectives, such as timely delivery of ATV technology to the

²⁹⁹ ATSC Further Comments at 4; ATSC Comments, Annex I at 1-2.

³⁰⁰ ATSC Comments, Annex I at 2-4 (SMPTE will formulate specifications for inter-studio distribution; IEEE, specifications for broadcast testing and measurement standards and terminology; EIA, consumer ancillary data, receiver interference standards, consumer VCR interchange standards and consumer equipment testing standards; NCTA, cable distribution; SBCA, DBS distribution and satellite commercial distribution.)

³⁰¹ We note that ISWP2 has offered suggestions to ATSC on the timely documentation of the ATV standard. See letter from Craig K. Tanner, Co-chairman of Advisory Committee Implementation Subcommittee Working Party 2, to Lynn Claudy, Chairman of ATSC T3/S1 (dated Aug. 24, 1992).

³⁰² EIA/ATV Committee Comments at iii, 12; Joint Broadcaster Comments at v, 25.

³⁰³ Second Report/Further Notice, 7 FCC Rcd at 3359-60.

³⁰⁴ EIA/ATV Committee Comments at iii, 13; MPAA Comments at 8; AT&T Comments at 5.

³⁰⁵ Sony Comments at 37; EIA/ATV Committee Comments at iii, 13; MPAA Comments at 8.

American public.³⁰⁶ In particular, we endorse, as does NCTA, the efforts of the Advisory Committee, through its Field Test Task Force, to ensure that the system selected as the ATV standard performs satisfactorily for both broadcast and cable operations.³⁰⁷ We similarly encourage the ongoing efforts of the Advisory Committee to foster compatibility with computer and other data applications.

B. Dual-Mode Receivers: Further Notice

81. FIT, who proposes an ATV system to be received on conventional NTSC television sets, claims that the All Channel Receiver Act³⁰⁸ and our implementing rules require that a new ATV system be compatible with existing receivers.³⁰⁹ The All Channel Receiver Act gives us the authority to require that television receivers "be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting."³¹⁰ The All Channel Receiver Act does not preclude selection of a broadcast transmission system that requires new receivers. It also does not mandate the manufacture of dual-mode receivers. We further note that some manufacturers believe that, as a practical matter, in the transition period, ATV receivers will be dual mode.³¹¹ We also observe that we do not have precise evidence regarding the relative costs of dual mode receivers, as opposed to NTSC sets supplementally equipped with downconverters. We are concerned that we not establish manufacturing requirements that may overly or prematurely burden consumers.

³⁰⁶ EIA/ATV Committee Comments at 14; AT&T Comments at 5. We thus welcome the contributions towards compatibility of parties such as EIA. See EIA/ATV Committee Comments at 14 n. 16 (noting EIA's participation in and establishment of an ATV Receiver Interface Subcommittee).

³⁰⁷ NCTA Comments at 5-6 n. 6. We expect that this Task Force, which is in the process of compiling a report to the Advisory Committee, will adequately address the contingency of a system's failing to perform adequately in the field, a concern of NCTA's. As ATV receivers have not yet been produced, the Task Force will be unable to accommodate FIT's request that the picture quality of each of the proponent systems be tested on consumers. FIT Comments at 9.

³⁰⁸ 47 U.S.C. §303(s), 47 C.F.R. § 15.117.

³⁰⁹ FIT Comments at 6-8; FIT Reply at 5-7.

³¹⁰ 47 U.S.C. §303(s). The Senate Report cited by FIT indicates that Congress intended by the Act to give the FCC the power to require "that all television receivers shipped in interstate commerce or imported into the United States be equipped at the time of manufacture to receive all television channels." S. Rep. No. 1526, 87th Cong., 2d Sess., at 1 (1962); FIT Comments at 8 n.9.

³¹¹ See Zenith Comments at 5; Sony Comments at 48-49; NAB Reply at 5. The cost to implement NTSC-capability in these receivers is estimated at \$50-\$100. Zenith Comments at 5; NAB Reply at 5.

In light of the foregoing, we seek comment on whether there is any need to require that manufacturers produce receivers capable of both NTSC and ATV reception during the period prior to full conversion to ATV. In particular, we seek comment on the effect such a requirement would have, if any, on the cost of receivers to consumers.

C. Audio Advances: Report and Order

82. The Second Report/Further Notice directed the Advisory Committee (1) to address any new audio developments; (2) to address ATSC proposals for flexible use of audio and data; and (3) to consider any analogous instances of extensibility that arise.³¹² Dolby, ATSC, EIA/ATV Committee, Lucasarts and Joint Broadcasters agree that the issue of audio advances warrants consideration as an attribute of an ATV system.³¹³ The Advisory Committee is in the process of addressing these issues³¹⁴, and we encourage these efforts. It would be premature for us to intervene in these matters at this stage of Advisory Committee proceedings, as some suggest, and we decline to do so.³¹⁵

X. NEW DEVELOPMENTS: REPORT AND ORDER

83. The Second Report/Further Notice sought comment on the Advisory Committee's findings that there are no new technologies that offer important new benefits and are in a sufficiently concrete state of development to be considered with the existing systems.³¹⁶ The majority of commenting parties concur in the Advisory Committee's assessment.³¹⁷ However, several parties, including ATSC, recognize that there may be potential significance in an emerging digital transmission technology, Coded Orthogonal Frequency Division

³¹² Second Report/Further Notice, 7 FCC Rcd at 3362.

³¹³ Dolby Comments at 2-8; ATSC Further Comments at 3; EIA/ATV Committee Comments at iii, 16; Lucasarts Comments at 1-2; Joint Broadcaster Comments at v, 24-25.

³¹⁴ Minutes of Joint Meeting of FCC Advisory Committee on Advanced Television Service Planning Subcommittee Working Party 1 on ATS Technology Attributes and Assessments and Working Party 2 on ATS Test Planning, at 2-3 (July 15, 1992), PSWP1 and WP2-088 (adding attributes 3.1.1 (independently coded channels), 3.1.2 (matrix surround coded channels), 3.1.3 (composite coded channels)) (Preliminary Audio Amendment).

³¹⁵ Dolby Comments at 8; EIA/ATV Committee Comments at 16. We observe that the Preliminary Audio Amendment, supra, includes preliminary options that appear to answer the technical concerns raised by Lucasarts and Lim. Lucasarts Comments at 1-2; Lucasarts Additional Comments; Lim Comments at 2-4.

³¹⁶ Second Report/Further Notice, 7 FCC Rcd at 3362.

³¹⁷ Joint Broadcasters Comments at 24; ATSC Further Comments at 3; EIA/ATV Committee Comments at 17; GI Comments at 2-3; AT&T Comments at 6; Zenith Reply at 11-12.

Multiplex (COFDM), which is being tested in Europe.³¹⁸ We direct the Advisory Committee to monitor these developments and report to us as appropriate.³¹⁹ We understand that the Advisory Committee is presently exploring the potential use of multiple low power transmitters with proponent ATV systems.³²⁰ We defer further consideration of this question, which Symes also raises in his comments,³²¹ until this task is complete.

84. Two other commenters outline in their pleadings new HDTV technologies.³²² It appears that these parties have yet to submit documentation to the Advisory Committee showing that their systems "offer important new benefits" and "are in a sufficiently concrete state of development to be considered with the existing systems."³²³

XI. PROCEDURAL MATTERS

A. Notice and Comment Provisions

85. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before December 21, 1992 and reply comments

³¹⁸ Symes Comments at 2-3; Schreiber Comments at 7-8; Schreiber Reply at 2; ATSC Further Comments at 4 n.5.

³¹⁹ AT&T argues that orthogonal frequency division multiplex and single frequency networks may pose difficulties in an HDTV application. See AT&T Reply at 2-5. While we recognize that these arguments may have merit, we believe that no substantial delay would be caused by monitoring the development of COFDM, while at the same time there may be potential benefits from such additional data. Cf. Schreiber Reply at 3-5.

³²⁰ ISWP2 is addressing the issue and has requested from SSWP1 a study of the technical feasibility of distributed transmission with proponent ATV systems. See letter from Merrill Weiss, Vice Chairman of Advisory Committee Implementation Subcommittee Working Party 2, to Birney Dayton, Chairman of Advisory Committee Systems Subcommittee Working Party 1 (dated Aug. 4, 1992).

³²¹ Symes Comments at 2-3. We also defer the related question which Telemundo raises, of permitting stations to initiate ATV broadcasts using relatively low power facilities, until we have the benefit of the ISWP2 report. Telemundo Comments at 4. See also MSTV Reply at 26 (allow stations to begin HDTV broadcasts at low power); Micro Reply (new channel assignments should be permitted to operate at lower than maximum effective radiated power (ERP) for the same reason that over 80% of the present UHF stations are now operating at lower than maximum ERP). But see Zenith Reply at 10 (require minimum HDTV field strength over principal community).

³²² Quadratic Comments at 1-2; FIT Comments at 2-4.

³²³ First Order, 5 FCC Rcd at 5629.

on or before January 29, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Washington, D.C. 20554.

B. Ex Parte Rules

86. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.203, and 1.206(a).

C. Regulatory Flexibility Act Statement

87. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this decision, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. A Final Regulatory Flexibility Analysis Statement is contained in Appendix C. The Secretary shall send a copy of this Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1980).

XII. ORDERING CLAUSES

88. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, this Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making IS ADOPTED.

89. IT IS FURTHER ORDERED that the Petitions For Reconsideration filed by America's Public Television Stations, et al., Association for Maximum Service Television, Inc., Diversified Communications, et al., National Association of Broadcasters, National Capital Communications, Inc., and Polar Broadcasting, Inc., et al., ARE GRANTED IN PART AND DEFERRED IN PART TO THE EXTENT INDICATED HEREIN AND OTHERWISE DENIED.

90. IT IS FURTHER ORDERED that the Motion for Leave to File Comments out of Time of the Office of Advocacy of the Small Business Administration IS GRANTED and its Comments ARE ACCEPTED.

91. For further information regarding this proceeding, contact Gina Harrison, Legal Branch, Policy and Rules Division, Mass Media Bureau (202) 632-7792, Gordon Godfrey, Engineering Branch, Policy and Rules Division, Mass Media Bureau (202) 632-9660, or Alan Stillwell, Office of Engineering and Technology (202) 653-8162.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

APPENDIX A

Parties Filing Reconsideration Petitions (filed June 22, 1992 unless otherwise indicated)

America's Public Television Stations, Corporation for Public Broadcasting,
Public Broadcasting Service (Public Television) (Clarification and
Partial Reconsideration)

Association for Maximum Service Television, Inc. (MSTV) (Partial
Reconsideration)

Diversified Communications, Maine Radio and Television Company, Guy Gannett
Publishing Company (Diversified)

National Association of Broadcasters (NAB) (Partial Reconsideration)

National Capital Communications, Inc. (NCCI) (Partial Reconsideration and/or
Clarification)

Polar Broadcasting, Inc., LPTV stations K08LC, K33DJ, K69FX, K30BI; Polar
Broadcasting of Arizona, Inc., LPTV station K67FE; Linda K. Trumbly, LPTV
stations K67FE, K22DD, K36CS; Ted C. Tucker, LPTV station K43CW; Gary M.
Kenny, LPTV station K32CL; Gary M. Kenny & Deborah R. Kenny, LPTV stations
K09VM, K46CZ; Peggy L. Davis and Deborah R. Kenny, LPTV station K38DD; Gary
Cocola LPTV stations K34AV, K66CQ, K04NT; Kurt J. Petersen, LPTV station
K58DH; Randy Weigner LPTV station W33AV; Glenn R. Plummer & Karin A.
Plummer, LPTV station W48AV; Roger Skinner, LPTV station W27AQ; Buffalo
Communications, Ray "Black Buffalo" Wilson, Chairman, LPTV station K53DU;
Sara Biaz Warren, full-power station KJLF-TV; Vision Broadcasting Network,
Inc., Pete E.M. Warren, President, LPTV station K63CD, K12MP; Broadcasting
Systems Inc., Kenneth Casey, President, LPTV station K25DM; BSP Broadcasting
Inc., Pete D'Costa, President, LPTV station K35BO, K53DS, full-power
television station KJTL-TV; KCIT Acquisition Company, Pete D'Costa,
President, full-power television station KCIT-TV; Dupont Investment Group-
85.LTD, William K. Maxwell, General Partner, LPTV station K33DB; San
Jacinto Television Corporation, Max F. Vigil, President, full-power
television station KTFH-TV; White Sage Broadcasting Co., Larry Rogo,
Managing Partner LPTV station K07UI; Channel 29 Associates, Larry Rogo,
Managing Partner, LPTV station W29AH; Fireweed Television, Carol Schatz,
President LPTV station K06LY, K18CS, full power station KYES-TV, and Kidd
Communications, Chris Kidd, Owner LPTV station K43CT; and Assal Broadcasting
Co., Gary Spire, Owner, LPTV station W05BZ (Polar) (filed June 17, 1992,
corrected June 18, 1992)

Parties Filing Oppositions to Reconsideration Petitions (filed July 16, 1992 unless otherwise indicated)

MSTV Opposition to and Comments on Petitions for Reconsideration of Polar

Broadcasting, et al and NCCI (MSTV Opposition) (July 16, 1992)
Public Television (July 16, 1992)

Parties Filing Replies to Oppositions to Reconsideration Petitions

MSTV
NCCI

Pleadings Supporting or Commenting Upon Reconsideration Petitions or Issues

Community Broadcasters Association (supporting reconsideration petition) (CBA) (filed June 16, 1992)
Freedom Newspapers, Inc. (supporting reconsideration petitions) (Freedom) (filed July 10, 1992)
Gillett Holdings, Inc., SCI Television, Inc., and Busse Broadcasting Corporation (commenting on petitions for partial reconsideration) (GHI) (July 16, 1992)
Morgan Murphy Group (supporting petitions for reconsideration) (Morgan Murphy) (July 16, 1992)
Network Affiliated Stations Alliance (supporting reconsideration petitions) (NASA) (filed July 15, 1992)

Commenting Parties

(filed July 17, 1992 unless otherwise indicated)

Advanced Television Systems Committee (ATSC) (June 5, 1992)
American Telephone and Telegraph Company (AT&T)
ATSC Further Comments (filed July 15, 1992)
Brechner Management Company, on behalf of Northeast Kansas Broadcast Service, Inc., licensee of KTKA-TV, Topeka, Kansas and Delmarva Broadcast Service General Partnership, licensee of WMDT-TV, Salisbury, Maryland (Brechner) (filed July 10, 1992)
Brunson Communications, Inc. (Brunson)
Capital Cities/ABC, Inc. (CapCities)
CBS, Inc. (CBS)
Cohen, Dippell, and Everist (CDE)
Dolby Laboratories (Dolby)
EIA/ATV Committee (EIA/ATV) (states that filed as timely responses to reconsideration petitions also) (July 16, 1992)
Fox, Inc. (Fox)
Future Images Today (FIT)
General Instrument Corporation (GIC)
Golden Orange Broadcasting Co., Inc. (Golden Orange)
Grass Valley Group, Inc. (Grass Valley) (June 29, 1992)
Island Broadcasting Co. (Island)
Joint Broadcasters (consisting of Association for Maximum Service Television, Inc.; National Association of Broadcasters; Public Broadcasting Service; Capital Cities/ABC, Inc.; Association of Independent Television Stations, Inc.; Association of America's Public Television Stations; CBS, Inc.; National Broadcasting Company, Inc.; Network Affiliated Stations Alliance, ABC Television Network Affiliates Association; Fox, Inc., and Fox Television

Stations, Inc.; CBS Television Network Affiliates Association; NBC Television Network Affiliates Association; A. H. Belo Corporation; American Family Broadcast Group, Inc.; Bahakel Communications, Ltd.; Bonneville International Corporation; Busse Broadcasting Corporation; Allbritton Communications Group; Associated Broadcasters, Inc.; Benedek Broadcasting Corporation; Burnham Broadcasting Company, A Limited Partnership; Capitol Broadcasting Company, Inc.; Cedar Rapids Television Company; Cosmos Broadcasting Corporation; Diversified Communications; Encore Communications, Inc. of Syracuse; Freedom Communications, Inc.; Chronicle Publishing Company; Cox Communications, Inc.; Eagle Communications, Inc.; Engles Communications, Inc.; Freedom Newspapers, Inc.; Freedom-TV Sub, Inc.; Fisher Broadcasting, Inc.; Galloway Media, Inc.; Gateway Communications, Inc.; Gray Communications Systems, Inc.; Freedom WINE-TV, Inc.; Forum Publishing Company; Gannett Co., Inc.; Gillett Holdings, Inc.; Granite Broadcasting Corporation; Great American Television and Radio Company, Inc.; Griffin Television, Inc.; Heritage Media Corporation; Independent Broadcasting Company; Kelly Broadcasting Co.; Greenville Television, Inc.; The Hearst Corporation; Hubbard Broadcasting, Inc.; Jefferson-Pilot Communications Company, Jefferson-Pilot Communications Company of Virginia; Kelly Television Co.; King Broadcasting Company; KTAL-TV, Inc.; Media General Broadcast Group; McGraw-Hill Broadcasting Company, Inc.; Midstate Television, Inc.; Koplar Communications, Inc.; Lin Broadcasting Corporation; Meredith Corporation; Michiana Telecasting Corp.; Midwest Television, Inc.; ML Media Partners, L.P.; Multimedia Broadcasting Co.; Nepsk, Inc.; Plains Television Partnership; Ponce-Nicasio Broadcasting, Ltd.; Morgan Murphy Group; Nationwide Communication, Inc.; The New York Times Company (and its broadcast subsidiaries); Pollock/Belz Communications Co., Inc.; Post-Newsweek Stations, Inc.; Precht Television Associates, Inc.; Quincy Newspaper Broadcast Group; Retlaw Enterprises, Inc.; Sarkes Tarzian, Inc.; Scripps Howard Broadcasting Company; The Providence Journal Company; Renaissance Communications Corp.; Rose Communications; SCI Television, Inc.; Spartan Radiocasting Co.; Sunbeam Television Corporation; Tribune Broadcasting Company; Vermont ETV, Inc.; WBNS-TV; WGBH Educational Foundation; Sunshine Television, Inc.; United Communications Corp.; W. Russell Withers, Jr., Licensee of KREX-TV, KREZ-TV, KREG-TV, KREY-TV, WDTV and KAVU-TV; Westinghouse Broadcasting Company, Inc.; WKEN Broadcasting Corporation; WLOX Television, Inc.; WPSD-TV; WTHR-TV; WTVZ, Inc.; Young Broadcasting, Inc.; WPEC/Photo Electronics Corporation; WRGB Broadcasting, Inc.; WTVB, Inc.; WWOR-TV, Inc. (Joint Broadcasters)

Land Mobile Communications Council (LMCC)

Jae S. Lim, Professor of Electrical Engineering, Director of Advanced Television Research Program, Massachusetts Institute of Technology (Lim) (filed July 16, 1992)

Lucasarts Entertainment Company (Lucasarts) (filed July 16, 1992)

Additional Comment of Lucasarts (Lucasarts Additional Comment)

MSTV, submitting Report of Larry F. Darby, "Implementation of Broadcast High Definition Television: Costs, Burdens, and Risks" (Darby Report)

Micro Communications, Inc. (Micro) (July 16, 1992)

Motion Picture Association of America (MPAA)

National Cable Television Association (NCTA)

National Telecommunications and Information Administration (NTIA)

Office of Advocacy, Small Business Administration (Aug. 3, 1992)

Public Television

Quadratic Solutions, Inc. (Quadratic)

Hector Garcia Salvatierra (Salvatierra)

William F. Schreiber , Professor of Electrical Engineering, Emeritus, Research
Laboratory of Electronics, Massachusetts Institute of Technology
(Schreiber) (filed July 14, 1992)

Skinner Broadcasting, Inc. (Skinner)

Sony Corporation of America (Sony)

Sutro Tower, Inc. (Sutro) (July 16, 1992)

Peter D. Symes (Symes) (June 29, 1992)

Telemundo Group, Inc. (Telemundo)

Zenith Electronics Corporation (Zenith)

Parties Filing Informal Comments

Mike Stone (Stone) (filed 20, 1992)

Parties Filing Reply Comments

(filed August 17, 1992 unless otherwise indicated)

AT&T

FIT

Micro

MSTV

NAB

NCTA

Zenith

Parties Filing Informal Replies

Schreiber (filed Aug. 24, 1992)

APPENDIX B

Initial Regulatory Flexibility Statement

I. Reason for Action:

1. This action is taken to invite further comment on outstanding questions affecting implementation of advanced television (ATV) service in this country.

II. Objectives of the Action:

2. The Commission seeks further comment on the issues surrounding the introduction of ATV service in order to establish a comprehensive, reliable record on which to base decisions in this area. The record established by this proceeding will ensure that our rules lead to the harmonious and efficient implementation of ATV in the United States.

III. Legal Basis:

3. Authority for this action may be found in 47 U.S.C. §§ 154 and 303.

IV. Reporting, recordkeeping and other compliance requirements:

4. No reporting, recordkeeping, or compliance requirements are specifically proposed in this notice.

V. Federal rules which overlap, duplicate or conflict with these rules:

5. This notice proposes no rules which would overlap, duplicate or conflict with other federal rules.

VI. Description, potential impact and number of small entities involved:

6. Approximately 1,500 licensed commercial and educational UHF and VHF television stations, approximately 4,918 licensed UHF and VHF translator stations and approximately 1,284 licensed UHF and VHF low-power television stations could be affected by the actions ultimately taken in this proceeding. Professional and consumer equipment manufacturers also will be impacted by our decisions.

7. This notice makes proposals that potentially could affect small entities. We invite comment on several proposals involving the disposition of the corresponding ATV paired channel in instances of a successful renewal challenge for an NTSC channel. We tentatively decide that a renewal challenger should be permitted to file a supplemental application for the ATV channel, which would be contingent upon grant of the challenger's NTSC application. The contingent ATV application would not be subject to a second comparative hearing.

8. Noncommercial television operators would be positively affected by our proposals to account for their special difficulties in obtaining funding

within the application/construction period we establish. We also invite comment on other methods of relief. Noncommercial television operators likewise stand to benefit from our decision to extend the application/construction period from five years to six and to permit those who apply early a correspondingly longer time (within the six-year overall period) to construct.

9. We solicit comment on whether it would be necessary to exercise our authority under the All Channel Receiver Act to require manufacturers to produce receivers capable of both NTSC and ATV reception during the period prior to full conversion to ATV.

VII. Any significant alternatives minimizing the impact on small entities consistent with stated objectives:

10. In offering proposals for public comment in all facets of this proceeding, we have tried to select alternatives that would cause the least disruption to the least number of parties. This concern is reflected in the proposals adopted and discussed in the Final Regulatory Flexibility Act Statement in Appendix C. For example, we acknowledge that initial ATV application priority for existing noncommercial television broadcasters could be jeopardized by their inability to meet the application/construction deadline due to delays caused by their reliance on governmental funding and private donations. In this notice, we suggest the following means of compensating for this disadvantage: establishing a special application period for noncommercial licensees; relaxing the financial requirements noncommercial stations must meet during the application period; and intensifying our coordination with funding agencies such as the National Telecommunications and Information Administration. We solicit comment on these and other responses to noncommercial television's unique circumstances.

11. In order to permit affected entities to take advantage of compatible technological innovations, we invite comment on the types of advanced digital uses that might be permitted on the ATV channel.

12. Finally, we seek comment on whether to allow broadcasters the flexibility to generate additional revenue on their ATV channels, which would help finance the investment and operation of their ATV channels, by using these channels for ancillary purposes, analogous to ancillary uses of NTSC.

APPENDIX C

FINAL REGULATORY FLEXIBILITY STATEMENT

I. Need and purpose of this action:

1. The Third Report and Order portion of this decision resolves critical issues concerning implementation of Advanced Television (ATV) Service in this country. Our goal is to select the best ATV system and the most effective procedures for implementing that choice, with optimum results for the industries involved and the public, and with minimum negative consequences.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

2. Although the Small Business Association (SBA) acknowledges the need to set a conversion date for stations which have invested in ATV equipment, it questions our contention in the Final Regulatory Flexibility Analysis that mandatory across-the-board conversion is necessary for administrative simplicity. SBA maintains that small businesses (particularly low-power television stations) might never recover from the financial burden of premature mandatory conversion to ATV. SBA suggests that the Commission wait for the market for ATV to develop naturally, based on consumer demand. This approach would allow stations to optimize use of their current facilities and broadcast equipment, plan a conversion schedule suitable to their size and audience, and obtain the best financing possible. Finally, SBA fears that equipment suppliers will enjoy an artificial market and lack incentives for reasonable pricing.

3. SBA also comments that, although it favors suspension of the dual network rules, to ensure efficient ATV implementation, this suspension should not extend to situations where a network's ATV and NTSC feeds go to different licensees in the same broadcast market. SBA cites three reasons for its position on this issue: (1) allowing non-network affiliate stations to broadcast network ATV programs will deprive the affiliate of the ratings and revenues it might have received by airing the same program over an NTSC channel or will force affiliates to compete with non-affiliates; (2) allowing the network's ATV feed to go to a different licensee in the market defeats the purpose of the suspension, and imperils small independent station operation; and (3) the networks' argument that consumers might be initially denied ATV programming is outweighed by the potential damage which may be caused to local broadcasters. SBA "sees no reason to bolster the health of the networks at the expense of their local affiliates." SBA states that affiliates, to maximize their revenues, will invest in ATV technology when they find it appropriate, and until that time, networks must be prohibited from forcing their affiliates to compete for network programming with other stations in the same market.

III. Significant alternatives considered and rejected:

4. The Third Report/Third Notice does not accept SBA's arguments regarding conversion. We question SBA's view that a station that has not made the investment in ATV equipment, as SBA posits will be the case for smaller

stations, would be less likely to "tie up" spectrum resource than one who has actually made an investment. If we extended our conversion period to accommodate a station's individual decisions on when to invest in ATV technology, as SBA suggests, we would have no guarantee that the conversion channel would be used for any purpose in any reasonable period of time, and no guarantee that the reversion channel could be reclaimed at any given point. We believe that a timetable for surrender of simulcast channels will expedite the freeing of spectrum of significant value to other users. Existing broadcasters likely will be awarded most of the available ATV channels, and, as a result, will not face unrestrained competition from new entrants. We find that a timetable for ATV development substitutes for such competition and encourages broadcasters to meet consumers' needs in a timely fashion. We thus decline SBA's suggestion that we adopt an approach to ATV implementation that permits broadcasters to plan their own conversion schedules.

5. With respect to SBA's position regarding the dual network rule, we expect that low receiver penetration at the start of ATV implementation is likely to make ATV advertising revenues relatively small compared to NTSC revenues, so that a network is unlikely to favor its new ATV affiliate over its NTSC affiliate. In addition, we do not agree that we should protect existing affiliates even at the expense of denying viewers a network ATV signal in a particular community. Should our projections regarding the development of ATV ultimately be disproved, we can adjust our policies at our periodic reviews of the ATV implementation timetable that we have scheduled. If in fact ATV programming proves lucrative from the beginning, it is likely that the network affiliate will be motivated to implement ATV and will not be subject to competition from a separate ATV affiliate. We thus temporarily suspend the dual network rule during the transition to ATV.

APPENDIX D

LIST OF UNPUBLISHED DOCUMENTS

ATV Test Procedures Test Management Plan (Rev. Sept. 25, 1990)

FCC Advisory Committee on Advanced Television Service, Implementation Subcommittee Working Party 2 on Transition Scenarios, Report on Survey Regarding Software Availability (Aug. 24, 1992) (ISWP2, Software Survey)

FCC Advisory Committee on Advanced Television Service, Implementation Subcommittee Working Party 2 on Transition Scenarios, Summary of Responses to Questions for Proponents (Aug. 24, 1992) (ISWP2 Summary of Proponent Responses)

FCC Advisory Committee on Advanced Television Service, Implementation Subcommittee Working Party 2 on Transition Scenarios, Transmitter and Antenna Manufacturer Survey (Aug. 24, 1992) (ISWP2 Transmitter and Antenna Manufacturer Survey)

Fifth Interim Report of the FCC Advisory Committee on Advanced Television Service (March 24, 1992), which contains the following document:

FCC Advisory Committee on Advanced Television Service, Contribution to the Fifth Interim Report of the Implementation Subcommittee from Working Party 2 on Transition Scenarios (Jan. 31, 1992) (ISWP2 Fifth Interim Report)

Fourth Interim Report of the FCC Advisory Committee on Advanced Television Service, which contains the following documents:

A CBS Work-in-Progress (Oct. 23, 1990, Preliminary Results) (CBS Study), which in turn contains the following document:

Memorandum by Jules Cohen and Associates (Appendix A) (June 19, 1990)

High Definition Television (PBS Engineering Preliminary HDTV Estimates) (Oct. 1990) (PBS Study)

Letter from Craig K. Tanner, Co-Chairman of Advisory Committee Implementation Subcommittee Working Party 2, to Lynn Claudy, Chairman of ATSC T3/S1 (dated Aug. 24, 1992)

Letter from Merrill Weiss, Vice Chairman of Advisory Committee Implementation Subcommittee Working Party 2, to Birney Dayton, Chairman of Advisory Committee Systems Subcommittee Working Party 1 (dated Aug. 4, 1992)

Market Penetration of HDTV, Working Party Five Planning Subcommittee, Advisory Committee on Advanced Television Service (June 20, 1992) (PSWP5 1992 Study)

Minutes of Joint Meeting of FCC Advisory Committee on Advanced Television Service Planning Subcommittee Working Party 1 on ATS Technology Attributes and

Assessments and Working Party 2 on ATS Test Planning (July 15, 1992), PSWP1 and WP2-088 (Preliminary Audio Amendment)

Results of 1992 International Summer CES On-Site Consumer Surveys (July 26, 1992) (released by PSWP5)

SMPTE documents:

Draft Proposed SMPTE Standard for Composite Analog Video Signal Widescreen NTSC T14.39-02/Rev. 5.0 (August 7, 1991) (private committee document -- not for publication)

Draft Proposed SMPTE Standard for Television Signal Parameters 1050/59.94/2:1 and 525/59.94/1:1 Advanced Television Production Systems, T14.391/Rev. 4.2 (Sept. 6, 1991) (private committee document - - not for publication)

Draft Proposed SMPTE Standard for Television Signal Parameters 787.5/59.94/1:1 and 1575/59.94/2:1 Advanced Television Production Systems, T.14.392/Rev. (Sept. 6, 1991) (private committee document -- not for publication)

Proposed SMPTE Standard for Television -- Digital Representation and Bit-Parallel Interface -- 1125/60 High-Definition Production System, SMPTE 260M (published for comment only)

SMPTE Standard for Television-Signal Parameters -- 1125/60 High-Definition Production System, SMPTE 240M-1988 (approved Mar. 14, 1988)